

***Craig, Smith & Cutler, LLP***  
**LAWYERS**

*Patrick J. Craig  
Michael A. Smith  
Lawrence B. Cutler  
Shean D. Fletchall  
Jordan D. Reilly*

*1305 12<sup>th</sup> Street  
P.O. Box 431  
Eldora, IA 50627  
Telephone: 641-939-5475  
Fax: 641-939-3157*

July 30, 2009

Ian Rigg  
Eldora City Administrator  
1442 Washington Street  
Eldora, IA 50627

RE: Edgington Avenue/Highway 175

Dear Ian:

Pursuant to your request I have examined the public records to determine the status of Edgington Avenue, a.k.a Highway 175 from 15<sup>th</sup> Street to 17<sup>th</sup> Street. Edgington Avenue from 15<sup>th</sup> Street to 17<sup>th</sup> Street was platted and dedicated for public use as a street under the following plats:

1. Original town plat for the City of Eldora, recorded July 21, 1854 in Book A, Page 43 of the records of the Hardin County Recorder.
2. Moore's Addition to the City of Eldora, recorded September 29, 1870, in Book 27, Page 38 of the records of the Hardin County Recorder.
3. County Auditor's Third Plat to the City of Eldora recorded October 10, 1904, in Book 182, Page 540 of the records of the Hardin County Recorder.
4. Outlot 9 and Outlot 10, recorded November 29, 1904, in Book 212, Page 55 of the records of the Hardin County Recorder.

The City of Eldora amended the names to these streets via ordinance recorded January 4, 1916, in Book 246, Page 138-139 of the records of the Hardin County Recorder as supplemented and corrected on November 8, 1916 in Book 246, Page 183 of the records of the Hardin County Recorder.

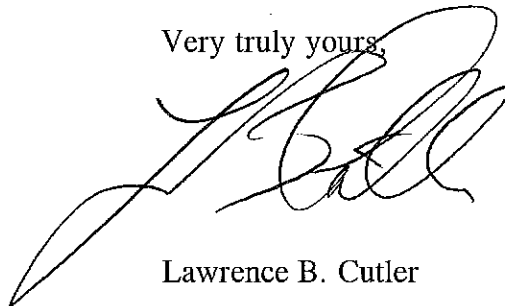
*Other Locations:*  
*213 E. Maple, Hubbard, IA 50122 • Telephone 641-864-3338*  
*621 Main Street, Ackley, IA 50601 • Telephone 641-847-2693 • Fax 641-847-3646*

According to Iowa law, the platting procedures utilized for the above named plats vested title in fee simple in the City of Eldora subject to any easements, covenants and restrictions of record. **Please be advised that I have not conducted a formal title search for any warranty deeds or other instruments of record subsequent to the platting of the streets and have not been provided with a certified abstract of title.** However, a review of the plats themselves do not indicate that any vacation proceedings or other instruments of conveyance of record which have been recorded which would close down Edgington or divest the city of ownership. My opinion of the current status of title to Edgington is based solely upon the plats noted above and the records of the Hardin County Auditor regarding said plats. If you wish to inquire further, you should check the records of the City vacation proceedings to ensure the road was never vacated.

In addition, Iowa Code §306.4(4) provides that jurisdiction and control over the municipal street system shall be vested in the governing bodies of each municipality with the exception of the Iowa Department of Transportation and the municipal governing body shall exercise concurrent jurisdiction over municipal extensions of primary roads in all municipalities. When concurrent jurisdiction is exercised, the department is required to consult with a municipal governing body as to the kind and type of construction, reconstruction, repair and maintenance and the two governmental entities are required to enter into agreements with each other as to the division of costs thereof.

No such agreement has been provided for my review, but my interpretation of that statute is that statute does not act to divest the City of Eldora of legal title to Edgington as a result of it being an extension of Highway 175. The City of Eldora should consult with the Iowa Department of Transportation to ensure any actions taken by the City of Eldora upon Edgington do not violate any agreement entered into with the Iowa Department of Transportation as a result of Iowa Code §306.4 (4).

Very truly yours,

A handwritten signature in black ink, appearing to read 'L. B. Cutler', written over the typed name.

Lawrence B. Cutler

LBC:sh